

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION**

EMILY LOUISE ZUFELT COLLAR,

Plaintiff,

v.

W.E.R.D.C.C.,

Defendant.

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Case No. 2:24-cv-6 JAR

MEMORANDUM AND ORDER

Self-represented Plaintiff Emily Collar brings this action under 42 U.S.C. § 1983 for alleged violations of her civil rights. The matter is now before the Court upon the motion of Plaintiff for leave to proceed *in forma pauperis*, or without prepayment of the required filing fees and costs. ECF No. 3. Having reviewed the motion and the financial information submitted in support, the Court will grant the motion and assess an initial partial filing fee of \$1.00. *See* 28 U.S.C. § 1915(b)(1). As Plaintiff is now proceeding *in forma pauperis*, the Court must review her complaint under 28 U.S.C. § 1915. Based on such review, the Court will direct Plaintiff to file an amended complaint on the Court-provided form in compliance with the instructions set out below. Furthermore, as there is no constitutional right to appointment of counsel in civil cases and it would be premature to grant appointment at this stage in the proceeding, the Court will deny Plaintiff's motion for counsel, subject to refile at a later date. The Court warns Plaintiff that her failure to comply with this Order could result in dismissal of this action.

Initial Partial Filing Fee

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action *in forma pauperis* is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his or her prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial

partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid. *Id.*

Plaintiff is a convicted and sentenced state prisoner. ECF No. 1 at 2. She has submitted a motion to proceed in the district court without prepaying fees or costs. ECF No. 3. Although the form motion states that an inmate must submit a certified prison account statement, Plaintiff has not done so. In her motion, however, she states that she has no job, no income, no assets, and no money in her prison account. *Id.* at 1-2. Based on the financial information plaintiff has submitted, the Court will assess an initial partial filing fee of \$1.00. *See Henderson v. Norris*, 129 F.3d 481, 484 (8th Cir. 1997) (when a prisoner is unable to provide the Court with a certified copy of her prison account statement, the Court should assess an amount "that is reasonable, based on whatever information the court has about the prisoner's finances."). If Plaintiff is unable to pay the initial partial filing fee, she must submit a copy of her prison account statement in support of her claim.

Legal Standard on Initial Review

Under 28 U.S.C. § 1915(e)(2), the Court may dismiss a complaint filed *in forma pauperis* if the action is frivolous or malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. When reviewing a complaint filed by a self-represented person under 28 U.S.C. § 1915, the Court accepts the well-pleaded facts as true, *White v. Clark*, 750 F.2d 721, 722 (8th Cir. 1984), and it liberally construes the complaint. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Haines v. Kerner*, 404 U.S. 519, 520

(1972). A “liberal construction” means that if the essence of an allegation is discernible, the district court should construe the plaintiff’s complaint in a way that permits the claim to be considered within the proper legal framework. *Solomon v. Petray*, 795 F.3d 777, 787 (8th Cir. 2015). However, even self-represented plaintiffs are required to allege facts which, if true, state a claim for relief as a matter of law. *Martin v. Aubuchon*, 623 F.2d 1282, 1286 (8th Cir. 1980); *see also Stone v. Harry*, 364 F.3d 912, 914-15 (8th Cir. 2004) (refusing to supply additional facts or to construct a legal theory for the self-represented plaintiff).

To state a claim for relief, a complaint must plead more than “legal conclusions” and “[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A plaintiff must demonstrate a plausible claim for relief, which is more than a “mere possibility of misconduct.” *Id.* at 679. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 678. Determining whether a complaint states a plausible claim for relief is a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. *Id.* at 679.

The Complaint

Because Plaintiff failed to answer many of the questions on the form § 1983 complaint that she filed to initiate this action, it is hard for the Court to decipher what claims Plaintiff is attempting to assert and who she seeks to bring those claims against. *See* ECF No. 1. It is clear that Plaintiff is an inmate at Women’s Eastern Reception, Diagnostic & Correctional Center (“WERDCC”) in Vandalia, Missouri. *Id.* at 2. However, Plaintiff listed no names in the complaint caption (not even her own as plaintiff) and named no defendants in ‘The Parties to this Complaint’ section. *Id.* at 1-3. As no defendants were named in the complaint, this case was docketed with Plaintiff’s place of incarceration, WERDCC, as the sole defendant.

Furthermore, although Plaintiff's 'Original Filing Form' states that this case is neither the same nor substantially equivalent to a previously filed case in this Court, *see* ECF No. 1-3, Plaintiff makes multiple references in the complaint to something that she previously filed. For example, Plaintiff begins the 'Statement of Claim' section by stating: "I sent a statement to you already." ECF No. 1 at 3. Also, Plaintiff attached a letter to the complaint, discussing possible sources of discovery for this action, that begins with "Hello Again." ECF No. 1-1. Despite these references to prior filings, a review of Court records reveals no closed or pending federal cases for Plaintiff.

In addition, the Court is unable to decipher Plaintiff's brief 'Statement of Claim,' which states in her own words:

The only main question I didn't answer would be #5 safety and security was not up heard from Missouri DOC and the offenders were not punished as I had been for no wrong doing. [A]lso I had not been taken care of medic[al]ly correct.

ECF No. 1 at 3.

In terms of injuries, Plaintiff states that she had head trauma, "acute hypertension of the brain," and blurry vision. *Id.* at 4. Plaintiff mentions that after the "false imprisonment Prea,"¹ she has "mental issues" and "ptsd." *Id.* Finally, Plaintiff asserts that none of her injuries were "checked" and she "got no care" for them. *Id.*

For relief, Plaintiff states in her own words:

I've been assa[u]lted on their watch and falsely imprisoned[.] I have issues I have to live with for the rest of my life. The women they let do this to me[,] they use as monsters to hurt others[.] I would like to sue for this life changing time here. I'm not sure how much but I will never be the same after the abuse DOC has inflicted upon me[.]

Id. at 5.

¹ "The PREA is intended to address the problem of rape in prison, authorizes grant money, and creates a commission to study the issue. 42 U.S.C. § 15601 *et seq.* The statute does not grant prisoners any specific rights." *Chinnici v. Edwards*, 2008 WL 3851294, at *3 (D. Vt. Aug. 12, 2008).

Discussion

Plaintiff brings this action pursuant to 42 U.S.C. § 1983, which was designed to provide a “broad remedy for violations of federally protected civil rights.” *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 685 (1978). To state a claim under 42 U.S.C. § 1983, a plaintiff must establish: (1) the violation of a right secured by the Constitution or laws of the United States, and (2) that the alleged deprivation of that right was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988). Furthermore, “[l]iability under § 1983 requires a causal link to, and direct responsibility for, the deprivation of rights.” *Madewell v. Roberts*, 909 F.2d 1203, 1208 (8th Cir. 1990); *see also Martin v. Sargent*, 780 F.2d 1334, 1338 (8th Cir. 1985) (to be cognizable under § 1983, a claim must allege that the defendant was personally involved in or directly responsible for the incidents that deprived the plaintiff of his constitutional rights).

In this case, the complaint before the Court fails to state a § 1983 claim because it does not allege any violation of a right secured by the Constitution or laws of the United States. In addition, it does not name any defendants, nor does it assert that any civil rights violation was committed by a person acting under color of law. Liability under § 1983 requires that a named defendant be personally involved or directly responsible for deprivation of rights. Plaintiff fails to allege any specific person violated her rights.

As such, Plaintiff’s complaint is subject to dismissal under 28 U.S.C. § 1915(e)(2). However, because Plaintiff is self-represented and she has presented serious allegations to the Court, she will be allowed to amend her complaint in accordance with the instructions set forth below. *See Munz v. Parr*, 758 F.2d 1254 (8th Cir. 1985) (discussing how a court should give a *pro se* plaintiff a statement of the complaint’s deficiencies and a chance to amend the complaint before dismissing for failure to state a claim). Importantly, Plaintiff’s amended complaint must clearly state all the defendants that she wishes to sue and what she is suing them for. Plaintiff

cannot vaguely refer to filings outside of this case for the Court's review. Any relevant exhibits that Plaintiff wishes for the Court to consider must be attached to the amended complaint.

Instructions for Filing an Amended Complaint

Plaintiff is advised that the filing of an amended complaint **completely replaces** the original complaint and all supplements, and so it must include all claims Plaintiff wishes to bring. *See In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 928 (8th Cir. 2005) ("It is well-established that an amended complaint supersedes an original complaint and renders the original complaint without legal effect"). Any claims from the original complaint or any supplements that are not included in the amended complaint will be deemed abandoned and will not be considered. *Id.* Plaintiff must **type or neatly print** the amended complaint on the Court-provided prisoner civil rights complaint form, and the amended complaint must comply with the Federal Rules of Civil Procedure. *See* E.D. Mo. L.R. 2.06(A).

The Federal Rules of Civil Procedure require litigants to formulate their pleadings in an organized and comprehensible manner. Even self-represented litigants are obligated to abide by the Federal Rules of Civil Procedure and to plead specific facts as to each named defendant. *See U.S. v. Wilkes*, 20 F.3d 651, 653 (5th Cir. 1994). Plaintiff is required to set out her alleged claims in a simple, concise, and direct manner, and also the facts supporting her claims as to each named defendant. *See* Fed. R. Civ. P. 8(a)(2) (complaint should contain short and plain statement of claims); 8(d)(1) (each claim shall be simple, concise, and direct); 10(b) (parties are to separate their claims within their pleadings and the contents of which shall be limited as far as practicable to a single set of circumstances). Plaintiff should fill out the complaint form in its entirety.

In the "Caption" section of the complaint form, Plaintiff must state the first and last name, to the extent she knows it, of the defendant or defendants she wants to sue. *See* Fed. R. Civ. P. 10(a) ("The title of the complaint must name all the parties"). If there is not enough room in the

caption, Plaintiff may add additional sheets of paper. However, all the defendants must be clearly listed. Plaintiff should also indicate whether she intends to sue each defendant in his or her individual capacity, official capacity, or both.

In the “Statement of Claim” section, Plaintiff should begin by writing a defendant’s name. In separate, numbered paragraphs under that name, Plaintiff should write the specific facts supporting her claim or claims against that defendant. If Plaintiff is suing more than one defendant, she should proceed in the same manner with each one, separately writing each individual defendant’s name and, under that name, in numbered paragraphs, the factual allegations supporting her claim or claims against that defendant. Plaintiff should only include claims that arise out of the same transaction or occurrence, or simply put, claims that are related to each other. *See* Fed. R. Civ. P. 20(a)(2). Alternatively, Plaintiff may choose a single defendant, and set forth as many claims as she has against him or her. *See* Fed. R. Civ. P. 18(a). Plaintiff’s failure to make specific factual allegations against any defendant will result in that defendant’s dismissal.

If Plaintiff is suing a defendant in an individual capacity, she is required to allege facts demonstrating the personal responsibility of the defendant for harming her. *Madewell*, 909 F.2d at 1208. It is not enough for Plaintiff to refer to a group of defendants and make general allegations against them. Instead, Plaintiff must explain the role of each defendant so that each defendant will have notice of what he or she is accused of doing or failing to do. *See Topchian v. JPMorgan Chase Bank, N.A.*, 760 F.3d 843, 848 (8th Cir. 2014) (stating that the essential function of a complaint “is to give the opposing party fair notice of the nature and basis or grounds for a claim.”).

After receiving the amended complaint, the Court will review it pursuant to 28 U.S.C. § 1915. If Plaintiff fails to file an amended complaint on a Court-provided form within thirty (30) days in accordance with the instructions set forth herein, the Court may dismiss this action without prejudice and without further notice to Plaintiff.

Appointment of Counsel

Finally, Plaintiff has filed a motion for appointment of counsel. ECF No. 2. The appointment of counsel for an indigent plaintiff in a civil matter lies within the discretion of the Court. *Phillips v. Jasper Cnty. Jail*, 437 F.3d 791, 794 (8th Cir. 2006). There is no constitutional or statutory right to appointed counsel in civil cases. *Nelson v. Redfield Lithograph Printing*, 728 F.2d 1003, 1004 (8th Cir. 1984). Once the plaintiff has alleged a *prima facie* claim, the Court must determine the plaintiff's need for counsel to effectively litigate his claim. *In re Lane*, 801 F.2d 1040, 1043 (8th Cir. 1986). The standard for appointment of counsel in a civil case is whether both the plaintiff and the Court would benefit from the assistance of counsel. *Edgington v. Mo. Dep't of Corr.*, 52 F.3d 777, 780 (8th Cir. 1995), *abrogated on other grounds by Doe v. Cassel*, 403 F.3d 986, 989 (8th Cir. 2005). This determination involves the consideration of several relevant criteria, including "the factual complexity of the issues, the ability of the indigent person to investigate the facts, the existence of conflicting testimony, the ability of the indigent person to present the claims, and the complexity of the legal arguments." *Phillips*, 437 F.3d at 794 (citing *Edgington*, 52 F.3d at 780).

In this matter, the Court finds that appointment of counsel is not warranted at this time. The request for counsel is premature, as the Court has not completed review under 28 U.S.C. § 1915, defendants have not yet been served, and the Court has not issued any Case Management Order. The Court concludes that the appointment of counsel would not be of sufficient benefit to the Court or to Plaintiff at this time, and will deny Plaintiff's motion for appointment of counsel, without prejudice.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's motion for leave to proceed *in forma pauperis* [ECF No. 3] is **GRANTED**. See 28 U.S.C. § 1915(a)(1).

IT IS FURTHER ORDERED that the Plaintiff shall pay an initial filing fee of \$1.00 within **thirty (30) days** of the date of this Order. Plaintiff is instructed to make his remittance payable to “Clerk, United States District Court,” and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding. *See* 28 U.S.C. § 1915(b)(1).

IT IS FURTHER ORDERED that the Clerk of Court shall mail to Plaintiff a blank copy of the Court’s Prisoner Civil Rights Complaint form.

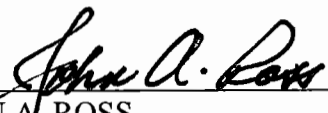
IT IS FURTHER ORDERED that, within **thirty (30) days** of the date of this Order, Plaintiff shall file an amended complaint on the Court-provided form and in compliance with the Court’s instructions.

IT IS FURTHER ORDERED that upon submission of the amended complaint, the Court shall again review this action pursuant to 28 U.S.C. §1915.

IT IS FINALLY ORDERED that Plaintiff’s motion for appointment of counsel [ECF No. 2] is **DENIED without prejudice**.

Plaintiff’s failure to timely comply with this Order shall result in the dismissal of this action, without prejudice and without further notice.

Dated this 6th day of May, 2024.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE